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JUN 19 1997

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

In the Matter of	)	
	)	
Policies and Rules Pertaining to Local	)	File No. CCB/CPD 97-19
Exchange Carrier "Freezes" on Consumer	)	<u>RM-9085</u>
Choices of Primary Local Exchange	)	
or Interexchange Carriers	)	
	)	
MCI Telecommunications Corporation	)	
Petition for Rulemaking	)	

**REPLY OF U S WEST, INC.**

U S WEST, Inc. ("U S WEST") supports the position of Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell that the "root-cause of the relevant consumer problems" addressed by the MCI Telecommunications Corporation ("MCI") Petition for Rulemaking ("MCI Petition" or "Petition") "is slamming, and primary interexchange carrier ("PIC") protection is an after-the-fact 'Band-Aid' to stop the bleeding."<sup>1</sup> Surely, no one would dispute that there are situations in which PIC freezing an account is an appropriate response to a consumer concern. Indeed, even the comments of interexchange carriers ("IXC") recognize as much.<sup>2</sup>

<sup>1</sup> Comments by Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell in Opposition to MCI's Petition for Rulemaking, filed herein June 4, 1997 at 12 ("SWBT") in response to MCI's Petition for Rulemaking, filed herein Mar. 18, 1997. And see Public Notice, Petition for Rulemaking Filed, File No. CCB/CPD 97-19, DA 97-942, rel. May 5, 1997.

<sup>2</sup> Comments of AT&T Corp., filed herein June 4, 1997 at 2 ("AT&T"); Comments of WorldCom, Inc., filed herein June 4, 1997 at 3 ("WorldCom").

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But it is naive to assume that the matter of PIC freezing can be suitably or adequately addressed in the abstract or outside the context which drives the need for the consumer protection remedy in the first place. Thus, U S WEST supports those commentators who urge the Federal Communications Commission (“Commission”) to forthwith initiate a Notice of Proposed Rulemaking regarding Section 258 of the Telecommunications Act of 1996.<sup>3</sup>

That Section requires that telecommunications carriers submit or execute changes in customers’ telephone exchange or toll service selection only in accordance with verification procedures established by the Commission.<sup>4</sup> The procedures adopted regarding the initial processing of customer “selections” will obviously have an impact on the downstream allegations that customers have been slammed, i.e., the predicate concern generating PIC freezes.

Carrier slamming is a serious matter and is adversely affecting the telecommunications marketplace. Rather than customers looking to embrace competition and their new competitive choices, they are fearful of finding out that their preferred carrier has been changed without their knowledge and/or authorization. Indeed, in U S WEST’s territory:

- the percentage of PIC disputes to PIC changes increased from 2.51 percent in December, 1995 to 4.17 percent in January, 1997 -- a 66 percent increase.
- the monthly PIC-dispute volume increased from 10,695 in December, 1995 to 23,000 in February, 1997 -- an increase of more than 115 percent.

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<sup>3</sup> Telecommunications Act of 1996, Pub. L. No. 104-104, 110 Stat. 56 (1996).

<sup>4</sup> 47 U.S.C. § 258(a).

Certainly, something needs to be done. And that "something" should focus on the generators/instigators of slamming complaints -- IXC's -- not those who try to remedy the situation through providing consumer protection measures.

In recognition of the fact that practices associated with customers exercising choices regarding their carrier selection is the first step in any carrier-selection regime, Section 258 begins there. Processing customer requests to sign on with or change carriers should not be a consumer burden. Like any other commercial transaction, the processes associated with the decision to enter into such a contract should be tailored to empowering consumers, not straddling them with unusual market practices.

While Section 258 leaves to the Commission the discretion of what might be appropriate market subscription practices, it legislatively requires a carrier-to-carrier remedy<sup>5</sup> that shall be instituted whenever there is a wrongful change of a customer from one carrier to another -- whether the wrongful change occurs as a result of a mistake or through pernicious motivations. This remedy is, of course, in addition to regulatory enforcement mechanisms already available to the Commission to deal with those who violate the Communications Act or Commission rules and regulations.

While the processes by which individuals make competitive choices should be easy, fluid and unburdensome in the first instance that does not mean that the practices of carriers should be easy and unburdensome when they have been

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<sup>5</sup> This remedy is different from that currently found in the Commission's rules. See 47 C.F.R. § 1.80.

demonstrated to be abusing the processes. In the latter situation, it is quite appropriate to burden those abusing actors (and their select group of customers or would-be-customers) with additional process burdens. The key to rationale regulation in this area is not to burden all customers or all carriers, but rather to impose additional processing burdens on those specific carriers whose behavior demonstrates a clear abuse of existing processes, rules and regulations.

Some of these additional burdens can be established by carriers processing PIC changes themselves, either unilaterally or through Commission oversight. Other burdens require swift and decisive regulatory action addressed to bad-acting carriers. In this respect, increased enforcement by the Commission can go a significant way in curbing the problem, as can larger fines and forfeitures already authorized under Section 503 (targeted specifically to “each violation” or “each day of a continuing violation”).<sup>6</sup>

In all events, it is obvious that a proceeding focused on local exchange carrier (“LEC”) PIC freeze practices is far too narrow -- if for no other reason than that LECs may not be the only carriers in the future offering such remedial measures to consumers. The inquiry needs to be expanded to the processes associated with carrier selections, remedies associated with wrongful changes of customers’ preferred carriers, and the appropriate regulatory enforcement measures to be directed to those carriers who persistently and egregiously violate customer choices

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<sup>6</sup> 47 U.S.C. § 503(b)(2)(C).

and Commission mandates. Such an inquiry requires a Section 258 rulemaking.  
We encourage the Commission to initiate such a rulemaking as soon as possible.

Respectfully submitted,

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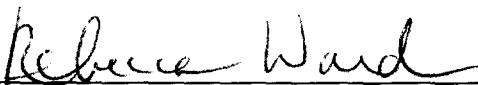
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June 19, 1997

## **CERTIFICATE OF SERVICE**

I, Rebecca Ward, do hereby certify that on this 19th day of June, 1997, I have caused a copy of the foregoing **REPLY OF U S WEST, INC.** to be served via first-class United States Mail, postage prepaid, upon the persons listed on the attached service list.

  
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